

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BARBARA OLSEN, DONALD OLSEN, SR.,
DONALD OLSEN, JR., and LONG ISLAND
HOUSING SERVICES, INC.,

Plaintiffs,

-against-

STARK HOMES, INC. D/B/A GLENWOOD
VILLAGE and BRIAN STARK,

Defendants.

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MOTION FOR REASSIGNMENT

09-cv-04283 (LDW)

MOTION FOR REASSIGNMENT PURSUANT TO LOCAL RULE 50.4

Pursuant to Local Rule 50.4, Plaintiffs Barbara Olsen, Donald Olsen, Sr., Donald Olsen, Jr. and Long Island Housing Services, Inc. (“Plaintiffs”) respectfully request reassignment of the above-captioned case to an alternate judge for trial due to the unavailability of Judge Wexler. *See* July 21, 2015 Notice of Hearing (adjourning trial set for July 27, 2015 without a date). Reassignment is appropriate in the interests of justice and for the efficient disposition of the business of the court. *See* Local R. 50.4.

Delaying this trial for an additional 4 to 5 months will result in considerable prejudice to Plaintiffs and hamper the efficient disposition of this long-pending action. After a three day trial in December 2012, this Court granted Defendants’ Rule 50 motion, which the Second Circuit then vacated and remanded for trial in August 2014. *See* Dkt. Nos. 80, 86, and 94. On May 18, 2015, this Court set Plaintiffs’ case for trial on July 27, 2015. *See* Dkt. No. 103.

The parties were informed today that due to a conflict in the Court’s schedule, the trial set for July 27 is adjourned without a date. The parties were further directed to provide proposed dates for trial in November and December.

Local Rule 50.4 states that cases may be reassigned in the interest of justice and the efficient disposition of the business of the court. Both factors are present here. Since May 18, Plaintiffs have been proceeding diligently with preparing this case for trial. Plaintiffs have subpoenaed and provided witness checks to all of their witnesses for Monday, July 27, have cleared their work schedules to be available for trial, and have booked travel for counsel (who reside and practice in Washington, D.C.)—as well as an out-of-town witness. One of the key witnesses for Plaintiffs’ case has arranged to be in New York for the months of July and August,

but resides outside of the Court's subpoena power in Florida and would be unable to be subpoenaed for a trial date later in the year.

Adjourning the trial until the final months of the year would result in a considerable waste of resources and prejudice to Plaintiffs, who may be unable to present their best case due to the unavailability of witnesses. Moreover, it would serve to further delay the resolution of this case, which was remanded for trial almost one year ago and has been pending for over half a decade.

Reassignment would not prejudice Defendants or impose an undue burden on another judge. Although this case is a re-trial, the case does not involve complicated legal issues that would require in-depth familiarity with the facts or law, is fully prepared for trial, and is expected to last approximately three days.

Given the Court's unavailability prior to the end of this year, Plaintiffs respectfully request that the case be reassigned to an alternate judge who is available for trial as originally scheduled on July 27, 2015 or as soon as possible in light of the district's other demands.

Respectfully submitted,

/s/ Jia M. Cobb

Jia M. Cobb (admitted *pro hac vice*)

Tara K. Ramchandani (admitted *pro hac vice*)

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Dated: July 21, 2015